

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

RUSSELL D. ROSCO and BONNIE  
R. ROSCO,

Plaintiffs,

v.

EQUIFAX INFORMATION  
SERVICES; AMERICREDIT;  
COSTCO WAREHOUSE;  
EXPERIAN INFORMATION  
SOLUTIONS; FIRST BANK  
MORTGAGE; LAFONTAINE  
TOYOTA; REGIONAL  
ACCEPTANCE; ADVANTAGE  
GROUP; TIDEWATER CREDIT; and  
TRANSUNION LLS,

Defendants.

NO: 2:15-CV-325-RMP

ORDER GRANTING MOTIONS FOR  
SUMMARY JUDGMENT AND  
DENYING MOTION TO STRIKE

BEFORE THE COURT are a Motion for Summary Judgment filed by  
Defendant LaFontaine Toyota (“LaFontaine”), ECF No. 117, a Motion for  
Summary Judgment filed by Defendant Tidewater Finance Company  
(“Tidewater”), ECF No. 120, and LaFontaine’s Motion to Strike, ECF No. 136.

The Court has reviewed the motions, the record, and is fully informed.

ORDER GRANTING MOTIONS FOR SUMMARY JUDGMENT AND DENYING  
MOTION TO STRIKE ~ 1

## ANALYSIS

The moving party is entitled to summary judgment when there are no disputed issues of material fact when all inferences are resolved in favor of the non-moving party. *Northwest Motorcycle Ass’n v. United States Dep’t of Agric.*, 18 F.3d 1467, 1471 (9th Cir. 1994); FED. R. CIV. P. 56(c). If the non-moving party lacks support for an essential element of their claim, the moving party is entitled to judgment as a matter of law regarding that claim. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Importantly, at the summary judgment stage, the Court does not weigh the evidence presented, but instead assumes its validity and determines whether it supports a necessary element of the claim. *Id.* To prevail at the summary judgment stage, a party must establish that a fact cannot be genuinely disputed and that the adverse party cannot produce admissible evidence to the contrary. FED. R. CIV. P. 56(c). Once the moving party has met their burden, the non-moving party must demonstrate that there is probative evidence that would allow a reasonable jury to find in their favor. *See Anderson v. Liberty Lobby*, 477 U.S. 242, 251 (1986).

As a preliminary matter, the Court notes that Plaintiffs filed a response, with attachments, to the reply briefs of both LaFontaine and Tidewater. *See* ECF Nos. 135-(135-2). Since these documents were filed after Defendants submitted their reply briefs, they are impermissible “sur-replies,” despite Plaintiffs’ argument that they were only responding to what they allege is a “change in defense strategy.”

1 ECF No. 138 at 2.<sup>1</sup> However, due to Plaintiffs' pro se status, the Court will not  
2 strike the documents and has construed all of Plaintiffs' pleadings liberally. *See*  
3 *Bernhardt v. Los Angeles Cty.*, 339 F.3d 920, 925 (9th Cir. 2003) ("Courts have a  
4 duty to construe pro se pleadings liberally . . . .").

5 As this Court previously held in response to motions to dismiss from other  
6 defendants in this matter, Plaintiffs allege a deprivation of their rights, but fail to  
7 specify which statutes they seek to invoke beyond the statement of purpose of the  
8 Fair Credit Reporting Act, or upon which provisions of the Constitution their  
9 claims rely. Defendants interpret Plaintiffs' claims as seemingly alleging a  
10 violation of 15 U.S.C. § 1681b(f) for the improper use or acquisition of a credit  
11 report and Plaintiffs' responses adhere to that theory. Therefore, the Court  
12 construes Plaintiffs' First Amended Complaint as alleging that LaFontaine Toyota  
13 and Tidewater improperly accessed and used their credit reports without a  
14 permissible purpose.

15 Defendants cite *Godby v. Wells Fargo Bank, N.A.*, 599 F. Supp. 2d 934, 938  
16 (S.D. Ohio 2008), for the proposition that in order to sustain a claim of improper  
17 acquisition of a credit report, a plaintiff must establish the following three  
18 elements: "(1) [t]hat there was a 'consumer report' within the meaning of the  
19 [statute]; (2) [t]hat the defendant used or obtained it; and (iii) [t]hat the defendant

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20 <sup>1</sup> The Court addresses this argument below in analyzing the merits of this case.  
21

1 did so without a permissible statutory purpose.” ECF Nos. 117 at 4 and 120 at 5.  
2 The statute explicitly states a number of “permissible purposes” that can justify the  
3 furnishing of a consumer report, including “[t]o a person which [any consumer  
4 reporting agency] has reason to believe-- (A) intends to use the information in  
5 connection with a credit transaction involving the consumer on whom the  
6 information is to be furnished and involving the extension of credit to . . . the  
7 consumer . . . .” 15 U.S.C. § 1681b(a).

8 Both Defendants argue, and Plaintiffs admit, that Mr. Rosco signed a credit  
9 application while at LaFontaine Toyota’s car dealership, which Defendants argue  
10 provided them with a permissible purpose to access Mr. Rosco’s credit report.<sup>2</sup>

11 The terms of the credit application signed by Plaintiff Mr. Rosco state that:

12 I authorize dealer and any creditor to which dealer submits my  
13 application, together with any affiliates, agents, service providers or  
14 assignees of the dealer or creditor (“you” or “your”) as follows. You  
15 may investigate my credit and employment history, obtain consumer  
16 reports on me and contact my references in connection with this  
17 application. If an account is opened for me in response to this  
18 application, I authorize you to: obtain credit reports on me for the  
19 review, update, extension or collection of my account or other  
20 legitimate business purpose related to my account; contact my  
21 references and other creditors in connection with the collection of my

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<sup>2</sup> Defendants also state that Defendants never accessed Plaintiff Mrs. Rosco’s  
credit report. *See* ECF No. 120 at 8. Plaintiffs have not responded in any  
meaningful way to that assertion and the Court accepts Defendants’ representation  
as true.

1 account including the location of my financed or leased vehicle, and  
2 release information about your credit experience with me as permitted  
by law.

3 ECF No. 118-1 at 2. The Court need not look any further than the text of 15  
4 U.S.C. § 1681b to determine that this credit application explicitly granted  
5 LaFontaine Toyota permission to look into the Rosco's credit, and for Tidewater to  
6 do the same as one of LaFontaine Toyota's "affiliates, agents, service providers or  
7 assignees."

8 Despite the clear language of the agreement signed by Mr. Rosco, Plaintiffs  
9 focus on their assertions that they had not yet chosen a car nor reached the stage of  
10 the car-buying process when financing of a vehicle would occur. Plaintiffs argue  
11 that "[a] key item that the Defendant is overlooking is 'to purchase a vehicle [sic].'  
12 This is a disputed fact. The Plaintiff has maintained along [sic] that he did not look  
13 at, test drive or select a vehicle to purchase." ECF No. 126 at 2. They assert that  
14 "the defendants are basing their claim that there was a purchase being made that  
15 required financing. Thus, their dependence on this opinion is misplaced and  
16 outright inappropriate." *Id.* at 6. The Court understands these cryptic statements  
17 to argue that there is a disputed issue of material fact because Plaintiffs had not yet  
18 purchased a vehicle, and, therefore, Defendants had no permissible purpose to  
19 access their credit.

20 Plaintiffs have not cited any law that would support their argument that they  
21 must have selected a car, committed to purchasing it, and then individually

1 solicited financing from each individual Defendant in order for the Defendants to  
2 have a permissible purpose to access Plaintiffs' credit report. In fact, Plaintiffs'  
3 own statements negate that argument and demonstrate their understanding that a  
4 credit check can be completed prior to the final steps of the car-buying process.  
5 Plaintiffs reference advice from a relative when they state that "[t]he cousin's  
6 advice was to ask the finance manager to do a preliminary credit check to garner  
7 from the finance manger [sic] the most likely financing options you might be  
8 eligible for via their financing sources." ECF No. 126 at 2. In accordance with  
9 that advice, Plaintiffs actively sought out information regarding their financing  
10 options through a preliminary credit check, a fact that is further supported by the  
11 presence of Mr. Rosco's signature on the credit application.

12 The record reflects that Plaintiffs did not receive positive responses from  
13 Defendants as none of them was willing to extend credit to Plaintiffs under their  
14 requested terms. Following that negative outcome, Plaintiffs now attempt to argue  
15 that they never truly sought financing despite the explicit terms of Mr. Rosco's  
16 credit application.

17 Plaintiffs' responses to the present motions, including their filed sur-replies,  
18 further establish that there is no genuine dispute regarding material facts. Plaintiffs  
19 admit that Mr. Rosco signed a credit application for purposes of determining  
20 whether they could obtain financing; they identify the cars they would have liked  
21 to buy; and they support their opposition to summary judgment with irrelevant

1 details regarding the car-buying process. *See e.g.*, ECF No. 126-1. At the  
2 summary judgment stage, the Court determines whether or not there is any genuine  
3 issue of material fact, “material” being the operative word. “Only disputes over  
4 facts that might affect the outcome of the suit under the governing law will  
5 properly preclude the entry of summary judgment. Factual disputes that are  
6 irrelevant or unnecessary will not be counted.” *Anderson v. Liberty Lobby*, 477  
7 U.S. 242, 248 (1986). Plaintiffs’ arguments that they had not made a purchase and  
8 had not completed anything that would create a retail installment contract are  
9 irrelevant. Similarly, their citations to a guide from the Michigan Secretary of  
10 State explaining the car-buying process do nothing to vitiate the sufficiency of the  
11 credit application as providing a permissible purpose for Defendants to access Mr.  
12 Rosco’s credit.

13 In addition to opposing Defendants’ arguments, Plaintiffs request that the  
14 Court deny the motions for summary judgment or defer making a ruling until  
15 further discovery is completed because they allege that Defendants possess  
16 documents that would disprove Defendants’ arguments. *See* ECF No. 127 at 1-2.  
17 They argue that:

18 [i]t is these missing documents; purchase agreements in addition to the  
19 agreements between dealership and all of the financial entities defining  
20 RIC and purchase agreement, that are needed by the plaintiff to debunk  
21 the supposed purchase argument that is being propagated by the  
defendants. Without a purchase, there is no RIC, and thus no need to  
contact anyone about purchasing a RIC.

1 *Id.*

2 The Court finds that none of these documents is relevant to create a genuine  
3 issue of material fact regarding whether Defendants permissibly accessed the  
4 Rosco's credit. By signing the credit application, Mr. Rosco granted the  
5 permission that he now argues did not exist. Additionally, the request to reserve  
6 ruling on Defendants' motions pending discovery that Plaintiffs argue would  
7 disclose these documents illuminates the contradictory nature of Plaintiffs'  
8 arguments. Plaintiffs argue that they never entered into a purchase agreement, but  
9 then ask the Court to allow discovery to proceed to allow them access to a  
10 purchase agreement that apparently does not exist. The Court finds no good cause  
11 to reserve ruling on Defendants' motions.

12 Plaintiffs attempt to analogize their claims with the underlying facts of  
13 *Andrews v. TRW, Inc.*, 225 F.3d 1063, 1067 (9th Cir. 2000), *rev'd on other*  
14 *grounds*, 534 U.S. 19 (2001), by stating that "[i]n the Andrews case an identity  
15 theft [sic] committed the fraud of impersonation, where as [sic] in the instant case  
16 the dealership committed the fraud that a purchase agreement had been  
17 accomplished and/or that plaintiff had chosen a vehicle to purchase." ECF No. 126  
18 at 5. In *Andrews*, a plaintiff sought relief from those who accessed her credit  
19 report when an identity thief was applying for credit using her information. 225  
20 F.3d 1063. Under very different circumstances, the Roscos admit to visiting a car  
21 dealership after they had an interest in a "Kia Sorrento that [Mr. Rosco's] wife



1 wanted or the Kia Optima that the Plaintiff had seen in the dealership's online ad,"  
2 ECF No. 126-1 at 2; they intended to follow the advice of their relative to "ask the  
3 finance manager to do a preliminary credit check to garner from the finance  
4 manger [sic] the most likely financing options you might be eligible for via their  
5 financing sources," *id.*; and Mr. Rosco signed a credit application explicitly  
6 granting Defendants and others access to his credit report. These facts, which the  
7 Court draws from Plaintiffs' admissions, are entirely distinguishable from those  
8 underlying the case in *Andrews*.

9       Seemingly in recognition of the fact that Mr. Rosco signed the credit  
10 application that defeats Plaintiffs' claims, Plaintiffs have expanded on their claims  
11 to argue that they were fraudulently induced to sign that credit application. In their  
12 sur-reply, Plaintiffs seem to summarize their opposition to summary judgment by  
13 arguing that: "[t]here are two very important factual questions that have yet to be  
14 addressed by the Defendants – ((1) fraud by induction in regards to credit  
15 application [sic], (2) Defendant LaFontaine fraudulently representing to third  
16 parties (the 8 financial entities) that Plaintiff was purchasing a used 2014 Kia  
17 Sorento." ECF No. 135 at 2. The second point is irrelevant considering the terms  
18 of the credit application because no actual purchase was required to authorize the  
19 credit search, but the Court will address Plaintiffs' first "factual question."

20 Plaintiffs argue that:

1 [t]he Plaintiffs have stated in their declarations that the credit  
2 application was signed to garner the Finance Manager's opinion in  
3 regards to which vehicle (Kia Sorento or Kia Optima) would be the best  
4 option for the Rosco's [sic]. Any purpose suggested by any of the  
5 defendants other than the direct inquiry by the dealership would be  
impermissible purpose [sic]. The discussion with the salesperson was  
the credit application would only be seen by employees of the  
dealership and not by any other financial entity; any other use of the  
document is fraudulent.

6 ECF No. 135 at 3.

7 Plaintiffs cannot create a genuine issue of material fact by making bare,  
8 unsupported claims that a salesperson induced Mr. Rosco to sign a document by  
9 telling him that the dealership would not do what the credit application explicitly  
10 allowed. Plaintiff signed the credit application in an attempt to seek out financing  
11 options and now sues Defendants for acting on his request by researching the  
12 viability of different options.

13 Plaintiffs continue by arguing:

14 [i]n conclusion, there are disputed facts; (1) was there a purchase  
15 pending and thus a permissive purpose for financial entities to look at  
16 Plaintiff's credit or did Defendant LaFontiane [sic] fraudulently  
17 represent that Plaintiffs were purchasing a used 2014 Kia Sorento [sic],  
18 (2) was there fraud in the inducement to garner Plaintiff's signature on  
the credit application, and thus the credit application is voidable [sic].  
The credit application before us may lend support to the defense and  
render the Plaintiff's task of establishing its claim more difficult, but it  
should not be held to bar institution of an action for fraud.

19 *Id.* at 8. Plaintiffs' first "disputed fact" is not "material" and the second allegation  
20 is wholly unsupported.

1 Plaintiffs' bare allegations of "fraud in the inducement" lack factual support  
2 and are contrary to the facts established by the record in this case. In response to  
3 LaFontaine's motion to strike Plaintiffs' sur-replies, ECF No. 136, Plaintiffs  
4 explained their delay in alleging "fraud in the inducement" by arguing that they  
5 had to further develop their story "when Defendants decided to change their focus  
6 of their primary permissive purpose argument from a vehicle purchase to signing  
7 of a credit application." ECF No. 138 at 3. They fail to recognize that by his own  
8 admission, Mr. Rosco's signing of a credit application was an attempt to seek  
9 information about the possibility of financing for the purchase of a vehicle. The  
10 fact that a purchase was never completed does not vitiate the same permissible  
11 purpose that he granted to Defendants with his signature. Contrary to Plaintiffs'  
12 assertions, Defendants' arguments are consistent: they had written permission and  
13 a permissible purpose to obtain Mr. Rosco's credit report. Plaintiffs fail to create a  
14 genuine issue of material fact as their various assertions are either irrelevant or  
15 unsupported.

16 Throughout this litigation, the Court has given substantial consideration to  
17 Plaintiffs' status as pro se litigants despite the vague and contradictory nature of  
18 their claims. However, Plaintiffs' claims against LaFontaine Toyota and  
19 Tidewater do not survive summary judgment based only on Plaintiffs' bare,  
20 conclusory allegations.

21 / / /

1 Accordingly, **IT IS HEREBY ORDERED THAT:**

2 1. LaFontaine Toyota's Motion for Summary Judgment, **ECF No. 117**, is  
3 **GRANTED.**

4 2. Tidewater Finance Company's Motion for Summary Judgment, **ECF No.**  
5 **120**, is **GRANTED.**

6 3. LaFontaine's Toyota's Motion to Strike, **ECF No. 136**, is **DENIED.**

7 4. LaFontaine Toyota and Tidewater Finance Company are **DISMISSED** as  
8 defendants **WITH PREJUDICE.**

9 The District Court Clerk is directed to enter this Order and provide copies to  
10 counsel and pro se parties and to **terminate LaFontaine Toyota and Tidewater**  
11 **Finance Company as defendants in this matter.**

12 **DATED** this 5th day of July 2016.

13 s/ Rosanna Malouf Peterson  
14 ROSANNA MALOUF PETERSON  
15 United States District Judge  
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